IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

OP.No. 12313 of 2001(N)

PETITIONER:
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1. S.K.PURUSHOTHAMAN, S/O. KESAVAN, AGED 67 YEARS,
RESIDING AT SNAKARAMANGALAM HOUSE,
PANATHUR.P.O., (VIA.) RAJAPURAM.

2. V.T.JOSEPH, S/O. THOMAS, AGED 32 YEARS,
RESIDING AT VAZHANKAL HOUSE,
PANATHUR.P.O.

BY ADV. SRI.T.M.SREEDHARAN
SRI.T.S.ARUNKUMAR

RESPONDENTS:
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1. THE INTELLIGENCE OFFICER,
OFFICE OF THE INSPECTING ASSISTANT COMMISSIONER,
(A.I.T. & S.T.)
KANNUR.

2. THE DEPUTY COMMISSIONER,
A.I.T. &S.T.
KANNUR
(NOW DEPUTY COMMISSIONER OF COMMERCIAL TAXES).

3. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

4. THE STATION HOUSE OFFICER,
RAJAPURAM POLICE STATION,
RAJAPURAM,
KASARAGOD DISTRICT.

BY ADV.SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 12313/2001

ORDER ON CMP 19713/2001 IN O.P.No. 12313/2001

DISMISSED.

20/03/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ORDER NO. OR 102(A)/96-97 DATED 15/7/1996 ISSUED BY THE 1ST RESPONDENT.

P2 : COPY OF THE REVISION ORDER NO. RP 25/96 AND 26/96 DATED 24/3/1999 BY THE 2ND RESPONDENT.

P3 : COPY OF THE SUO MOTU REVISIONAL ORDER NO.R2/18371/99/CT DATED 07/11/2000 BY THE 3RD RESPONDENT.

P4 : COPY OF STATEMENT OF 2ND PETITIONER.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 12313 of 2001

Dated, this the 20th day of March, 2007

J U D G M E N T

Heard the learned counsel for the petitioner and the learned Government Pleader.

2. Order under challenge is Ext.P3 issued under Sec. 37 of the KGST Act, whereunder the Commissioner reversed the first revisional order of the Deputy Commissioner reducing penalty levied under Sec. 45A and restored the original penalty. The petitioner was involved in transport of consignment of rubber sheets from Kerala to Karnataka without payment of tax. A penalty of Rs. 36,000/- was levied by the Intelligence Officer, which was reduced in first revision to Rs. 9,000/-. The petitioner did not contest the penalty sustained in first revision. The learned counsel for the petitioner submitted that this amount is already paid. However, Commissioner initiated suo motu revisional proceedings and reversed the order of the first revisional authority and restored the order of the Intelligence Officer. Ext.P3 is the order of restoration of Ext.P1 order,

wherein penalty levied is Rs.36,000/-.

3. Even though there is no scope for interference with levy of penalty, which is confirmed in revision, I feel the order of the Commissioner restoring the penalty originally levied is not justified. In the first place, tax is determined based on estimate and it is seen that for the purpose of reckoning tax, security deposit is also added to tax amount, which itself is the sum total of local tax and CST. In the circumstance, order of the Deputy Commissioner reducing the penalty of Rs. 9,000/- is quite justified. I therefore allow the Original Petition by quashing Ext.P5 and restore the order of the Deputy Commissioner.

This Original Petition is allowed as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg